

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of)	
)	No O-99-315
Opinion requested by)	March 3, 2000
William P Wood,)	
Chief Counsel for the)	
Secretary of State)	
)	

BY THE COMMISSION. William P Wood, Chief Counsel for the Secretary of State, has requested an opinion of the Fair Political Practices Commission on the following questions:

I. Questions

(1) For purposes of imposing penalties for late filing of a statement or report under the Political Reform Act ("Act"),¹ are both the paper filing and the electronic filing by designated individuals and entities to be considered the original filing? Is the paper filing alone to be considered the original filing? Is the paper filing to be considered the original filing and the electronic filing a copy?

(2) For purposes of imposing penalties for late statement or report filing, are the deadlines set out in Section 91013(a) and (b) to apply to both paper and electronic filings required from designated individuals and entities?

II. Conclusions

(1) For purposes of imposing penalties for late filing of a statement or report under Section 91013 of the Act, the paper version and the electronic version of a statement or report are each considered to be an original

(2) The deadlines set out in Section 91013(a) apply to both the original electronic filing and the original paper filing submitted by a filer

III. Facts

In 1997, the Legislature passed SB 49, the Online Disclosure Act, mandating that the Secretary of State develop an electronic filing system for state candidates and committees (Sections 84600-84610.)² In response, the Secretary of State has created the CalAccess system of electronic filing for campaign and lobbying reports. In addition to the paper filing requirements imposed by the Act, the new electronic filing requirements

¹ Government Code sections 81000 - 91015. All section citations are to the Government Code, unless otherwise noted.

² The online filing provisions were amended by SB 658 in 1999 to conform the filing requirements to the March primary instead of a June primary date.

became effective for designated individuals and entities in January of 2000. Penalties for the late filing of statements or reports are set out in Section 91013(a) and (b) of the Act. Questions have arisen as to the application of Section 91013 to electronic filings.

IV. Analysis

Section 91013 of the Act sets forth fines for late filing of originals and copies of reports as follows:

“(a) If any person files an *original* statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this act, be liable in the amount of ten dollars (\$10) per day after the deadline until the statement or report is filed, to the officer with whom the statement or report is required to be filed. Liability need not be enforced by the filing officer if on an impartial basis he or she determines that the late filing was not willful and that enforcement of the liability will not further the purposes of the act, except that no liability shall be waived if a statement or report is not filed within 30 days for a statement of economic interest, other than a candidate's statement filed pursuant to Section 87201, five days for a campaign statement required to be filed 12 days before an election, and 10 days for all other statements or reports, after the filing officer has sent specific written notice of the filing requirement.

(b) If any person files a *copy* of a statement or report after any deadline imposed by this act, he or she shall, in addition to any other penalties or remedies established by this chapter, be liable in the amount of ten dollars (\$10) per day, starting 10 days, or five days in the case of a campaign statement required to be filed 12 days before an election, after the officer has sent specific written notice of the filing requirement and until the statement is filed.” (Emphasis added.)

* * *

Generally, fines on original statements under Section 91013(a) are imposed automatically and can be waived only if the filer submits the report within 10 days after receiving written notice that the filing is overdue. The fine for late filing of an original report starts running from the date the report was due.

Under Section 91013(b), the fine on a copy is assessed only if the filing officer sends specific written notice to the filer, and the fine starts running from the date the written notice is sent. Under both Section 91013(a) and (b), the maximum late fine is \$100 or the cumulative amount stated in the late report, whichever is greater. (Section 91013(c).)

Section 84605 of the online filing provisions provides, in part, as follows.

“(h) It shall be presumed that online or electronic filers file under penalty of perjury

(i) Persons filing online or electronically shall also continue to file required disclosure statements and reports in paper format. The paper copy shall continue to be the official filing for audit and other legal purposes until the Secretary of State, pursuant to Section 84606, determines the system is operating securely and effectively

(j) The Secretary of State shall maintain at all times a secured, official version of all *original online and electronically filed statements and reports* required by this chapter. Upon determination by the Secretary of State, pursuant to Section 84606, that the system is operating securely and effectively, this online or electronic version shall be the official version for audit and other legal purposes ” (Emphasis added)

We find that the explicit reference in section 84605(j) to “*original online and electronically filed statements and reports* required by this chapter” means that the online or electronic filing is an “original” statement or report for purposes of Section 91013(a)

Our conclusion is bolstered by the online filing provisions’ express presumption that online or electronic filers file under penalty of perjury (Sections 84604(d) and 84605(h)) Under Section 81004, original reports and statements filed under the Act must be signed under penalty of perjury and verified by the filer

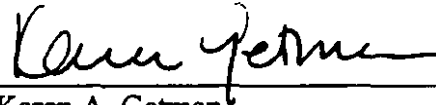
Finally, considering the electronic version to be an original fits the scheme of the online filing provisions. Section 84606 provides that once the Secretary of State, in consultation with the Commission and the Department of Information Technology, makes a determination that the online disclosure system is operating securely and effectively, filers who are required to file online will no longer be required to submit a paper format or duplicate filings as prescribed in Section 84215. After the Section 84606 determination is made, the electronic version will be the only version of the filing, so it is logically imperative that this version be an original

We therefore conclude that for purposes of imposing penalties for late filing, both the paper and electronic versions are an “original” under Section 91013(a). Accordingly, the deadlines set out in section 91013(a) apply to both the electronic and paper reports.

The Commission recognizes the importance of online filing, and is committed to working with the Secretary of State and filers to achieve maximum compliance with the online filing provisions of the Act. We are mindful, however, that even as the initial electronic filing deadlines have passed, vendors are still in the process of being approved, portions of the CalAccess system are still being built, and many filers are unfamiliar with the new requirements

We agree with the Secretary of State that at the outset of electronic filing, it may be necessary to exercise flexibility in assessing late fines on the electronic version³ We are informed that the Secretary of State is amending the policy on waiving fines for good cause to take into account electronic filing problems, and may in some cases notify filers about their obligation to file electronically informally or by telephone before issuing a fine letter We encourage these efforts

Adopted by the Commission on March 3, 2000 Concurring: Commissioners Deaver, Getman, Makel, and Swanson. Absent Commissioner Scott



Karen A. Getman
Chairman

³ Filing officers must make any decisions to waive a fine on an impartial basis Their decision cannot be based on their personal relationship with the filer, the political party of the filer, etc But the filing officer may consider illness, injury, personal tragedy or a similar legitimate reason for late filing (*In re Rundstrom* (1975) 1 FPPC Ops 188)